

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
TIME INC., HEARST CORPORATION, ADVANCE :
MAGAZINE PUBLISHERS INC., AMERICAN :
MEDIA, INC., HACHETTE FILIPACCHI MEDIA :
U.S., INC., THE MCGRAW-HILL COMPANIES, :
INC., NEWSWEEK, INC., SOURCE INTERLINK :
MAGAZINES, LLC, REED BUSINESS :
INFORMATION, A DIVISION OF REED :
ELSEVIER INC., VARIETY, INC., REED :
ELSEVIER PROPERTIES INC., BONNIER :
CORPORATION, ZIFF DAVIS PUBLISHING :
HOLDINGS INC., FORBES LLC, REIMAN MEDIA :
GROUP, INC., RD LARGE EDITION, INC., HOME :
SERVICE PUBLICATIONS, INC. and READER'S :
DIGEST LATINOAMERICA SA, :
:

Plaintiffs,

- against -

DARREN ANDREW BUDD, SALVEO LIMITED, :
CYBERNET COMMUNICATIONS, INC., :
SWITCHWORKS TECHNOLOGIES, INC.; :
HAMIDULLA GHUMAL ABBAS, YOAV :
SCHWARTZ, RICK ROSS and JOHN DOES 1-20, :
:

Defendants.

08 Civ. 7392 (WHP)

ECF Case

----- X
**DECLARATION OF JOHN BELLANDO IN SUPPORT OF PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, John Bellando, pursuant to 28 U.S.C. § 1746, declare as follows:

I. I am the Vice President of Advance Magazine Publishers Inc. ("AMPI"), of which The Condé Nast Publications is an unincorporated division, one of the plaintiffs in the within infringement action. I am fully familiar with the facts stated herein. I submit this declaration in support of plaintiffs' motion for a temporary restraining order and preliminary injunction enjoining and restraining defendants Darren Andrew Budd ("Budd"), Salveo Limited ("Salveo"), Cybernet Communications, Inc. ("Cybernet"), Switchworks Technologies, Inc. ("Switchworks"), Hamidulla Ghumal Abbas ("Abbas"), Yoav Schwartz ("Schwartz"), Rick Ross

(“Ross”) and John Does 1-20 (collectively, “Defendants”) from infringing plaintiffs’ copyrights, trademarks and trade dress.

2. AMPI is a New York state corporation with its principal place of business at Four Times Square, New York, NY 10036.

3. The purpose of this declaration is to set forth factual information and exhibits relevant to this injunction motion.

The Condé Nast Magazines

4. AMPI owns and publishes, among others, ALLURE, ARCHITECTURAL DIGEST, BON APPETIT, BRIDES, CONDE NAST TRAVELER, DETAILS, DOMINO, GLAMOUR, GOURMET, LUCKY, MODERN BRIDE, SELF, TEEN VOGUE, THE NEW YORKER, VANITY FAIR, VOGUE, W, and WIRED magazines, all well-known periodicals, and the WIRED GEEKIPEDIA supplement. ALLURE, ARCHITECTURAL DIGEST, BON APPETIT, BRIDES, CONDE NAST TRAVELER, DETAILS, DOMINO, GLAMOUR, GOURMET, LUCKY, MODERN BRIDE, SELF, TEEN VOGUE, THE NEW YORKER, VANITY FAIR, VOGUE, W, and WIRED magazines, and the WIRED GEEKIPEDIA supplement, are distributed throughout the United States (including in New York) and Canada, as well as throughout the world. For purposes of this declaration, ALLURE, ARCHITECTURAL DIGEST, BON APPETIT, BRIDES, CONDE NAST TRAVELER, DETAILS, DOMINO, GLAMOUR, GOURMET, MODERN BRIDE, SELF, TEEN VOGUE, THE NEW YORKER, VANITY FAIR, VOGUE, W, and WIRED magazines, and the WIRED GEEKIPEDIA supplement, shall together be referred to as the Condé Nast Magazines.

5. AMPI’s practice with regard to obtaining copyright on its monthly Magazines generally is to file, on a monthly basis, individual Short Form SE registration forms for the issues of all monthly Condé Nast Magazines published during the prior month. For The

New Yorker, Condé Nast registers the issues published during the prior month on a form SE/Group registration form. For the WIRED GEEKIPEDIA supplement, Condé Nast registers on a Form TX. With each application, two (2) copies of the relevant issue of the Magazines are filed with the Copyright Office.

Mygazines.com Is Infringing AMPI's Copyrights and Trademarks

6. I first became aware of the Mygazines.com website on or about July 28, 2008, at which time the website appeared to be fully populated with uniform, high-quality magazines. Without AMPI's knowledge, consent or authorization, Mygazines.com was displaying full text reproductions of numerous magazines owned and published by AMPI.

7. Specifically, the full text of the following Condé Nast Magazines owned and published by AMPI are being displayed by defendants on the Mygazines.com website without our consent:

a. ALLURE, issues dated June 2008, July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

b. ARCHITECTURAL DIGEST, issues dated January 2007 (Copyright Registration No. TX 6-502-788), February 2007 (Copyright Registration No. TX 6-513-535), March 2007 (Copyright Registration No. TX 6-549-578), April 2007 (Copyright Registration No. TX 6-559-017), May 2007 (Copyright Registration No. TX 6-593-361), June 2007 (Copyright Registration No. TX 6-595-375), September 2007 (Copyright Registration No. TX 6-825-462), October 2007 (Copyright Registration Number to be issued), November 2007 (Copyright Registration Number to be issued), May 2008 (Copyright Registration Number to be issued), July 2008 (Copyright

Registration Number to be issued), August 2008 (Copyright Registration Number to be issued). Copies of the issued certificates of registration are annexed hereto as part of Exhibit A, and copies of the registration applications are annexed hereto as part of Exhibit B.

c. BON APPETIT, issues dated June 2008, July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

d. BRIDES, issue dated July/August 2008 (Copyright Registration Number to be issued). A copy of the registration application is annexed hereto as part of Exhibit B.

e. CONDÉ NAST TRAVELER, issues dated July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

f. DETAILS, issues dated January/February 2006, June/July 2007, June/July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

g. DOMINO, issues dated June/July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

h. GLAMOUR, issues dated May 2008, June 2008 and August 2008, (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

i. GOURMET, issues dated July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

j. LUCKY, issues dated July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

k. MODERN BRIDE, issues dated June/July 2008 and August/September 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

l. THE NEW YORKER, issues dated April 7, 2008, April 14, 2008, April 21, 2008, April 28, 2008, May 5, 2008, May 12, 2008, May 19, 2008, May 26, 2008, June 2, 2008, June 9 & 16, 2008, June 23, 2008, June 30, 2008, July 7 & 14, 2008, July 21, 2008, July 28, 2008, August 4, 2008, August 11 & 18, 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

m. SELF, issues dated June 2008, July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

n. TEEN VOGUE, issues dated June/July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

o. VANITY FAIR, issues dated June 2008, July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

p. VOGUE, issues dated June 2008, July 2008 and August 2008 (Copyright Registration Numbers to be issued). Copies of the registration applications are annexed hereto as part of Exhibit B.

q. W, issue dated August 2008 (Copyright Registration Number to be issued). A copy of the registration application is annexed hereto as part of Exhibit B.

r. WIRED, issues dated October 2004 (Copyright Registration Number to be issued), January 2006 (Copyright Registration No. TX 6-341-378), January 2008, February 2008, March 2008, April 2008, May 2008, June 2008, July 2008 and August 2008 (Copyright Registration Numbers to be issued). A copy of the issued certificate of registration is annexed as part of Exhibit A and copies of the registration applications are annexed hereto as part of Exhibit B.

s. WIRED GEEKIPEDIA, issue dated October 2007 (Copyright Registration Number to be issued). A copy of the registration application is annexed hereto as part of Exhibit B.

8. AMPI also owns trademark rights in the titles of its Magazines. AMPI holds, *inter alia*, the following trademark registrations for its Magazines:

a. ALLURE is Registration Nos. 1378072 and 1751874 in International Class 16 for a magazine of general news and features and Registration No. 280811 in International Class 44 for an online website;

b. ARCHITECTURAL DIGEST is Registration No. 916331 and ARCHITECTURAL DIGEST (Design) is Registration No. 2471378 in International Class 16 for a magazine of general news and features, and Registration No. 2823955 in International Class 42 for an online website;

c. BON APPETIT is Registration No. 653791 and BON APPETIT (Stylized) is Registration No. 3480492 in International Class 16 for a magazine of general news and features, and Registration No. 2773320 in International Class 41 for an online website;

d. BRIDES (Stylized) is Registration No. 340115 in International Class 16 for a magazine of general news and features, Registration No. 2340335 in International Class 42 for an online website, and BRIDES.COM is Registration No. 3387062 in International Class 41 for an online website;

e. CONDÉ NAST TRAVELER (Stylized) is Registration No. 1568296 in International Class 16 for a magazine of general news and features and CONDÉ NAST TRAVELER is Registration No. 2761342 in International Class 41 for an online website;

f. DETAILS is Registration Nos. 2728880 and 2695667 in International 16 for a magazine of general news and features;

g. DOMINO is Registration No. 3014161 in International Class 16 for a magazine of general news and features and International Class 41 for an online website;

h. GLAMOUR is Registration No. 407439 and GLAMOUR (Stylized) is Registration No. 503282 in International Class 16 for a magazine of general news and features, Registration No. 3019078 in International Class 44 and 45 for an online website, and GLAMOUR.COM is Registration No. 2553759 International Class 42 for an online website;

i. GOURMET (Stylized) is Registration No. 384160 in International Class 16 for a magazine of general news and features and Registration No. 2766544 in International Class 43 for an online website;

j. LUCKY is Registration No. 2469245 in International Class 16 for a magazine of general news and features and International Class 42 for an online website, and Registration No. 2781524 in International Class 41 for an online website;

k. MODERN BRIDE is Registration No. 529969 in International Class 16 for a magazine of general news and features and Registration No. 2309148 in International Class 42 for an online website;

l. THE NEW YORKER is Registration No. 2746797 and THE NEW YORKER (Stylized) is Registration No. 844606 in International Class 16 for a magazine of general news and features, and Registration No. 2773319 in International Class 41 for an online website;

m. SELF is Registration Nos. 1120502, 1721094, and 1663404 in International Class 16 for a magazine of general news and features, and SELF.COM is Registration No. 1938464 in International Class 42 for an online website;

n. TEEN VOGUE is Registration No. 2568246 in International Class 16 for a magazine of general news and features and Registration No. 2835164 in International Class 42 for an online website;

o. VANITY FAIR is Registration No. 1229720 in International Class 16 for a magazine of general news and features and Registration No. 2952420 in International Class 41 for an online website;

p. VOGUE is Registration Nos. 125542, 504006, 1336659, and VOGUE (Stylized) is Registration No. 69530 in International Class 16 for a magazine of general news and features, Registration No. 3069976 in International Class 44 and 45 for an online website, and VOGUE.COM is Registration No. 2592452 in International Class 42 for an online website;

q. W is Registration No. 1882171 in International Class 16 for a magazine of general news and features and W& DESIGN is Registration No. 2624545 in International Class 42 for an online website;

r. WIRED is Registration Nos. 1853612 and 2150960 in International Class 16 for a magazine of general news and features, Registration No. 1997802 in International Class 38 for an online website, Registration No. 2781551 in International Class 35 for an online website, and Registration No. 3078104 in International Class 35 and 42 for an online website;

9. AMPI is the owner of common law trademark rights in its Magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of AMPI products. Many of the titles of Condé Nast's magazines are famous marks, including but not limited to Vogue, The New Yorker, Vanity Fair, Glamour, Gourmet, and Architectural Digest.

10. In addition, AMPI has rights to the trade dress of its Magazines. Each Magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. Mygazines.com displays the cover of ALLURE, ARCHITECTURAL DIGEST, BON APPETIT, BRIDES, CONDE NAST TRAVELER, DETAILS, DOMINO, GLAMOUR, GOURMET, LUCKY, MODERN BRIDE, SELF, TEEN VOGUE, THE NEW YORKER, VANITY FAIR, VOGUE, W, WIRED, and WIRED GEEKIPEDIA on its website, infringing AMPI's trade dress in those covers.

11. AMPI has not authorized or licensed defendants to post any content from its Magazines on the Mygazines.com website.

12. Indeed, AMPI operates web sites for or in connection with each of its Magazines, and offers some of the content available in the print editions of its Magazines through those sites. AMPI earns revenue from its websites by, among other things, offering advertising space to advertisers in conjunction with AMPI content. By offering the same content to consumers on its site, for free, Mygazines.com directly competes with AMPI's websites, as well as with the print editions of the Condé Nast Magazines.

AMPI Gave Defendants Notice of Their Infringing Activity

13. On July 23, 2008, employees of AMPI wrote to defendant Salveo, the registered owner of Mygazines.com, via Federal Express overnight mail at the address listed on

its domain registration and its email address, demanding that it cease and desist from providing AMPI's works to the public, in any form. AMPI did not receive any response from Salveo.

14. On July 24, 2008, employees of AMPI wrote to defendant Cybernet via Federal Express overnight mail at the address listed on its website, and to its email address, demanding that it immediately disable access to the Mygazines.com website or, at a minimum, block access specifically to the magazines published by AMPI. AMPI did not receive a response.

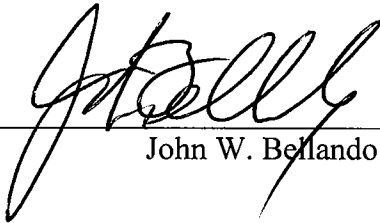
Defendants' Conduct is Causing AMPI Irreparable Harm

15. This application is brought on by way of Order To Show Cause because expedited relief is necessary due to the irreparable harm AMPI is suffering and will suffer from defendants' continued infringement of AMPI's copyrights, trademarks and trade dress.

16. Each day that defendants continue to display entire issues of ALLURE, ARCHITECTURAL DIGEST, BON APPETIT, BRIDES, CONDE NAST TRAVELER, DETAILS, DOMINO, GLAMOUR, GOURMET, LUCKY, MODERN BRIDE, SELF, TEEN VOGUE, THE NEW YORKER, VANITY FAIR, VOGUE, W, WIRED, and WIRED GEEKIPEDIA prolongs the harm suffered by AMPI. The Magazines are the product of the creative vision and hard work of hundreds of professionals, which defendants appropriate and distribute for their own end. Defendants' conduct undermines the entire industry and is nothing short of wholesale theft. It is particularly galling that defendants use the names and images of the Magazines to advertise its website, and then offer our products online in a way that replicates the experience of reading our magazines. The harm to AMPI is irreparable and should not be countenanced by this Court.

WHEREFORE, for the foregoing reasons, together with those set forth in the accompanying summons and complaint, declaration of other plaintiffs, and memorandum of law, your deponent respectfully prays for a temporary restraining order and preliminary injunction enjoining and restraining defendants from distributing or displaying AMPI's magazines, and from inducing and encouraging its users to upload our content.

Dated: August 19, 2008



John W. Bellando

Exhibit A
To
Bellando Declaration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Short Form SE

For a Serial
 UNITED STATES COPYRIGHT OFFICE

Registration Number

TX 6-502-788



Effective Date of Registration

Jan. 03, 2007

Application Received
 JAN 03 2007

Deposit Received
 One

Two JAN 03 2007

Fee Received

Examined by

mc

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1

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Architectural Digest

Volume▼
 64

Number▼
 1

Date on copies▼
 January 2007

ISSN▼
 0003-8520

2

NAME AND ADDRESS OF THE AUTHOR AND COPYRIGHT CLAIMANT IN THIS COLLECTIVE WORK MADE FOR HIRE

Advance Magazine Publishers, Inc.
 4 Times Square
 New York, N.Y. 10036

3

DATE OF PUBLICATION OF THIS PARTICULAR ISSUE

Month▼
 December

Day▼
 12

Year▼
 06

YEAR IN WHICH CREATION OF
 THIS ISSUE WAS COMPLETED (OF
 EARLIER THAN THE YEAR OF
 PUBLICATION)

Year▶ 2006

CERTIFICATION: I, the undersigned, hereby certify that I am the copyright claimant or the authorized agent of the copyright claimant of the work identified in this application, that all the conditions specified in the instructions on the back of this form are met, that the statements made by me in this application are correct to the best of my knowledge.

Handwritten signature (X) *[Signature]*

Typed or printed name of signer Karen Browning

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name▶ Karen Browning

Address (if other than given below)▶

Daytime phone▶ (212) 630-5611

Fax▶ (212) 630-5880

Email▶ karen_browning@condenast.com

DEPOSIT ACCOUNT

Account number▶ DA 019321

Name of account▶

Advance Magazine Publishers

d/b/a The Conde Nast Publications

Certificate will be mailed in window envelope to this address:

Name▼

The Conde Nast Publications, Contracts Dept. Attn: Karen Browning

Number/Street/Apt.▼

750 Third Ave, 3rd floor

City/State/ZIP▼

New York, New York 10017

YOU MUST:

- Complete all necessary spaces
- Sign your application
- SEND ALL 3 ELEMENTS IN THE SAME PACKAGE

1. Application form
2. Nonrefundable \$30 filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:

Library of Congress
 Copyright Office
 101 Independence Avenue, S.E.
 Washington, D.C. 20540-6000

Fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

*17 U.S.C. §506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with this application, shall be fined not more than \$2,500.



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

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 4 Times Square
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Month▼
 January

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 9

Year▼
 07

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 Year► 2007

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Typed or printed name of signer Karen Browning

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Marybeth Peters

Register of Copyrights, United States of America

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Fee Received

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Year▼

07

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Handwritten signature (X) *Karen Browning*

Typed or printed name of signer

Karen Browning

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Typed or printed name of signer *Karen Browning*

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Name▶ *Karen Browning*

Address (if other than given below)▶

Daytime phone▶ (212) 630-5611

Fax▶ (212) 630-5880

Email▶ *karen_browning@condenast.com*

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Account number▶ DA 019321

Name of account▶

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d/b/a The Conde Nast Publications

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Name▼

The Conde Nast Publications, Editorial Assets & Rights Attn: Karen Browning

Number/Street/Apt▼

1440 Broadway, 11th Floor

City/State/ZIP▼

New York, New York 10018

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[Signature]

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Michele Mastrodomenico

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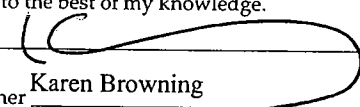
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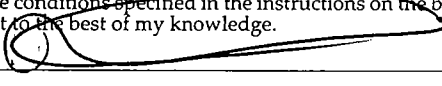
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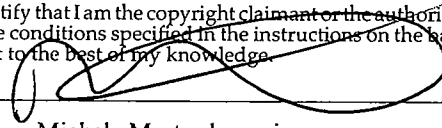
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Michele Mastrodomenico

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Fax▶ (212) 630-5880

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1.	LXXXIV	8	4/7/2008	3/24/2008
2.	LXXXIV	9	4/14/2008	4/7/2008
3.	LXXXIV	10	4/21/2008	4/14/2008
4.	LXXXIV	11	4/28/2008	4/21/2008
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2.	LXXXIV +	13 +	5/12/2008 +	5/5/2008 +
3.	LXXXIV +	14 +	5/19/2008 +	5/12/2008 +
4.	LXXXIV +	15 +	5/26/2008 +	5/19/2008 +
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3.	LXXXIV	18	6/23/2008	6/16/2008
4.	LXXXIV	19	6/30/2008	6/23/2008
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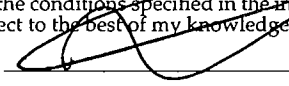
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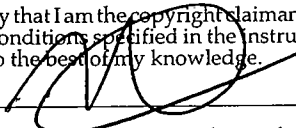
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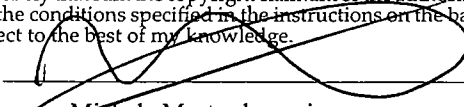
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Advance Magazine Publishers, Inc.
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PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name ► Michele Mastrodomenico

Address (if other than given below) ►

Daytime phone ► (212) 630-5613

Fax ► (212) 630-5880

Email ► michele_mastrodomenico@condenast.com

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